

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TOPSTEPTRADER, LLC,)
)
Plaintiff,)
)
v.) No. 17 CV 04412
)
ONEUP TRADER, LLC,) Chicago, Illinois
) June 26, 2017
Defendant.) 10:33 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:

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ALSO PRESENT: MR. JAY RUDMAN

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1 shaded in this reproduction is if you linked -- if you clicked
2 on it, it's a link, and it actually goes to the terms of use
3 of TopStepTrader.

4 Q. Thank you. Mr. Rudman, could you flip over to Exhibit D,
5 please?

6 A. Certainly.

7 Q. What is this?

8 A. This is --

9 MR. WOLFSOHN: Objection, lack of foundation. The
10 witness was not at the company during this time and has not
11 testified that he had any knowledge of the IT system, and it's
12 an --

13 THE COURT: Have we established that C was in
14 existence in 2015?

15 MR. WOLEK: C was in existence as of fall 2016. This
16 was in existence prior to that which also is contemporaneous
17 with where Mr. Rudman was with the company.

18 THE COURT: But the point was, as I understood it,
19 that your evidence will show that, and I can't remember his
20 name, but their principal --

21 MR. WOLFSOHN: Sattam Alsabah.

22 THE COURT: -- signed up in 2015. He agreed to the
23 terms. And so it would be important, I would think, to know
24 what he agreed to in 2015 because that was, if he has a
25 contract, that would be it, wouldn't it?

1 A. I have.

2 Q. And is it part of -- well, tell me how it came about that
3 you saw a digital version of this.

4 A. If you recall, I was the chief revenue officer of the
5 organization from June of 2016 until about March of 2017. And
6 this incarnation of the sign-up page existed on the
7 TopStepTrader website prior to November of 2016.

8 Q. And if one -- you'd agree -- you'd agree with me that
9 there was a lot of content other than Exhibit D in the website
10 at that time?

11 A. Oh, yes, sir.

12 MR. WOLEK: Objection, vague.

13 THE COURT: Overruled.

14 BY MR. WOLFSOHN:

15 Q. You said, "Oh, yes"?

16 A. I said, "Yes, sir."

17 Q. Okay. And do you know why that content was not provided
18 so that we could see Exhibit D in context?

19 A. I would not know that, no.

20 Q. And where it says, "I agree to the terms and conditions,"
21 what color is that in the actual website?

22 A. At this point in time back in the 2016 timeframe?

23 Q. On September 13th -- let me ask you this. Is it your
24 testimony, sir, that on September 13th, 2015, Exhibit D was
25 part of the website?

1 A. Yes, that is my testimony.

2 Q. All right. What color was it?

3 A. I can find that out. I don't want to mis-speak. It could
4 have been one of two colors.

5 Q. And I see here that there's -- you're supposed to put a
6 phone number or Skype ID in there.

7 A. Yes.

8 Q. Was that a required field?

9 A. Yes.

10 Q. All right. And but I see that on Exhibit 8, Mr. Alsabah
11 did not put in a phone number, correct?

12 A. Exhibit 8 might have just been the way they pulled the
13 data.

14 Q. I'm not asking for your speculation, sir. You'd agree
15 that it's not there, right?

16 A. I agree that it's not on this printout, Exhibit 8.

17 Q. And so you said it might be the way they pulled the data,
18 so you don't even know if Exhibit 8 shows all the data that
19 are available with respect to Sattam Alsabah?

20 A. Can you repeat the question, please?

21 Q. Can you say under oath whether or not Exhibit 8 has all
22 the data that you have about Mr. Alsabah?

23 A. I cannot say that.

24 Q. Okay. Did you ask for any records in the database as to
25 evidence that Mr. Alsabah read the terms and conditions?

MR. WOLEK: -- counsel again.

MR. WOLFSOHN: No, it's a question.

MR. WOLEK: They haven't been submitted into evidence.

MR. WOLFSOHN: I know. I haven't moved them into evidence.

MR. WOLEK: You didn't provide them to us beforehand.

MR. WOLFSOHN: You didn't provide me with a darn thing that you showed the Court today, sir.

THE COURT: The question is, is he correct in what his observation was. To your knowledge, either he is or he isn't or you don't know.

BY MR. WOLFSOHN:

Q. To your knowledge, did any of these videos including the one that's linked to your Linked In page require the watcher to agree to terms of use?

A. Not to my knowledge.

Q. Was a conscious decision made by the company to allow anybody with access to the internet to view, like you heard Conor say there, the entire website without having to agree to terms of use?

A. I don't know if it was the entire website. I just saw a few minutes of it. As I said, I haven't watched his entire video.

Q. Was a decision made that anybody with access to the internet could watch at least some of the website without

having to agree to terms of use?

A. Our goal is to provide as much transparency as possible and establish credibility.

Q. Meaning that you wanted people to watch videos like these which includes screen shots of the website without having them to agree to any of that fine print, correct?

A. I believe so, yes.

Q. So basically, it's your position that only people who have viewed the terms of use -- I'll withdraw that. Okay. Let's move on to something else.

Now, when did you first become aware of OneUp Trader's website?

A. OneUp Trader's website, we were aware of what we believe to be a predecessor of MES Capital probably right when I began, which would have been mid-2016, you know, around that time. I don't know the exact date for which I became aware of the oneuptrader.com website.

Q. How about the website that you believe is causing you irreparable harm, when did you become aware of that one?

A. That would have been early this year. I don't know an exact date, however.

Q. Okay. Let me see if I can refresh your recollection.

(Pause.)

MR. WOLEK: Can we have a copy, too?

MR. WOLFSOHN: Yes. Sorry about that.